Department of Defense
National Security Personnel System
Proposed Regulations

Overview

Flexibility – Accountability – Excellence

Why NSPS?

- Current system is inadequate to manage DoD civilian personnel in today's national security environment
  - Hiring is too slow; adversely affects our ability to attract and retain high quality talent
  - Current pay system results in outstanding performers being paid the same as poor performers
  - Rigid, inflexible rules hinder DoD's ability to act without delay to meet mission needs and manage from "total force" perspective

- DoD has over twenty years of successful experience with testing personnel flexibilities – it is now time to expand those flexibilities to the rest of the Department

- DoD needs a flexible, agile HR system to meet the demands of a dynamic national security mission, while preserving the core, enduring values of the civil service

Benefits of Proposed NSPS

- Proposed HR system provides greater flexibility to respond effectively to mission needs, while fostering excellence and ensuring accountability
- Employees will have greater opportunity to affect their pay through excellent performance
  - Pay increases based on performance and/or contribution to mission success; clear performance expectations linked to strategic Department goals and objectives
  - Safeguards built into performance appraisal process to promote fairness, transparency, and accountability
- Managers will be able to recruit/retain high quality talent more effectively
  - –Ability to offer more competitive, market-sensitive compensation
  - –Ability to fill jobs faster with streamlined hiring processes
- Improved reduction in force (RIF) procedures provide for less disruption associated with RIF and greater emphasis on performance as a factor in retention
- Expedited disciplinary and appeals process provides for faster resolution of workplace issues, while preserving due process rights
- New labor relations system recognizes critical national security mission of the Department; balances employee collective bargaining rights with DoD's need to act swiftly to meet mission requirements

NSPS Major Design Elements

Classification
- Pay architecture
- Job descriptions
- Occupational groupings

Pay/Compensation
- Market sensitive pay
- Performance-based pay
- Pay setting

Performance Mgmt
- Setting expectations
- Communicating/feedback
- Appraising performance
- Addressing poor performance

Hiring
- Hiring authorities
- Examining procedures

Reduction in Force
- Procedures for resizing organizations
- Defining competitive areas
- Factors for retention

NSPS proposal changes rules in these areas

Adverse Actions
- Dealing with performance and/or conduct problems
- Procedures for taking actions

Appeals
- Procedures for appealing adverse actions
- MSPB role

Labor Relations
- Collective bargaining rights
- Scope of bargaining
- Bargaining process
- Resolving labor disputes

NSPS Does Not Change
- Merit System Principles
- Rules against prohibited personnel practices
- Veterans Preference
- Benefits (retirement, health, life, etc.)
- Anti-discrimination laws
- Fundamental due process
- Allowances and travel/subsistence expenses
- Training
- Leave and work schedules
- Other personnel systems in law
- Lab Demo organizations (until FY 08)

Highlights of Proposed Regulations

CLASSIFICATION

- Simplified structure replaces General Schedule system
- Positions grouped in broad career groups and pay schedules based on nature of work, mission, career patters, and competencies
- Pay bands replace GS grades with broad salary ranges, based on level of work (e.g., entry level, full performance level, supervisor)
- More flexibility to assign employees new or different work
- Lengthy, detailed job descriptions no longer needed
- Movement through pay band based primarily on performance, contribution

PAY/COMPENSATION

- New framework to enable movement towards market sensitive pay, with consideration of local market conditions to set pay rates, including a local market supplement
- Performance pay increases based on performance/contribution, rather than longevity; larger increases go to outstanding performers; increases not given to unacceptable performers
- Greater flexibility in setting employee pay upon promotion, reassignment, etc.

PERFORMANCE MANAGEMENT

- Cornerstone of a successful performance-based pay system
- Supervisors work with employees to establish performance goals and expectations, aligned with mission-related goals
- Recognition of conduct (behavior, professional demeanor) as an element of performance
- Ongoing feedback and communication between supervisor and employees
- Intense training planned
- Ratings reflect meaningful distinctions in employee performance (no forced distribution or quotas)
- Formal process to be established for consideration of performance ratings

HIRING/STAFFING

- DoD, with OPM, may establish new hiring authorities, tailored to DoD's needs
- No change in principle of veterans' preference
- Government-wide hiring authorities and tools retained
- Direct-hire authority for severe shortage or critical needs vested in Secretary
- Opportunity to improve, streamline examining procedures to speed up the hiring process

Highlights of Proposed Regulations

REDUCTION IN FORCE

- Simplified RIF process provides for greater precision in defining competitive areas and retention lists (based on organization, location, line of business, or other business related factors)
- Preserves veterans' preference
- Flexibility to minimize disruption associated with RIF
- Greater emphasis on performance (over seniority) in retention

ADVERSE ACTIONS

- Single process for taking adverse actions based on performance and/or conduct
- Streamlined 15-day notice/10-day reply period
- Ensures due process
- Allows Secretary to designate Mandatory Removal Offenses (MROs); development and publication of MROs would include input from employee representatives

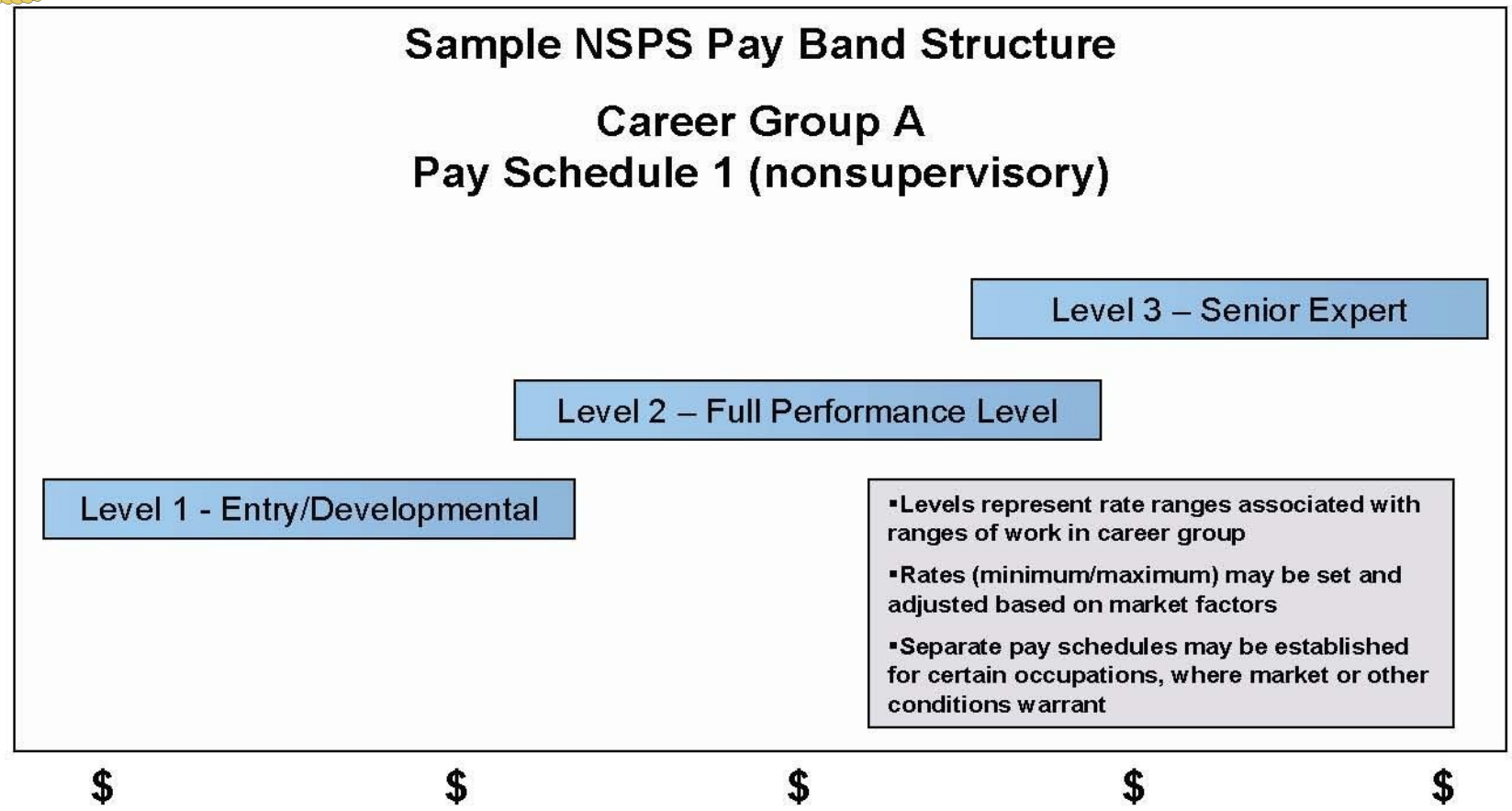
APPEALS

- Expedited appeals process, using MSPB administrative judges (AJ), with improved procedures
  - -Filing deadline for appeals reduced to 20 days
  - -Summary judgment allowed when facts not in dispute
  - -Initial decision must be rendered within 90 days
- DoD may review initial decisions within thirty days (or it becomes final); may remand, modify, affirm, or reverse initial decision, based on stringent criteria
- Final DoD decisions (including AJ decisions that become final) may be appealed to full MSPB, which retains limited review authority
- Single burden of proof standard: preponderance
- Mitigation by MSPB permitted only when penalty is wholly without justification
- Judicial review retained

LABOR RELATIONS

- Expands non-negotiable management rights (to include determining numbers, types and grades of employees, methods, technology and means of performing work)
- Prohibits bargaining over procedures in exercising core management rights, but management will consult with unions
- DoD and Component-wide issuances (e.g., directives, policies, manuals) non-negotiable
- Limited bargaining over certain management actions; may do so prospectively (post-implementation), with expedited collective bargaining process with impasse resolution
- Nothing delays management's ability to act to accomplish mission
- National Level Bargaining, at the discretion of the Secretary (unions may request such bargaining)
- Establishment of a National Security Labor Relations Board to resolve DoD labor disputes
- Negotiated grievance procedures with arbitration retained; but certain matters excluded

Pay Band Illustration


Sample NSPS Pay Band Structure
Career Group A
Pay Schedule 1 (nonsupervisory)
Level 3 – Senior Expert
Level 2 – Full Performance Level
Level 1 - Entry/Developmental
▪Levels represent rate ranges associated with ranges of work in career group
▪Rates (minimum/maximum) may be set and adjusted based on market factors
▪Separate pay schedules may be established for certain occupations, where market or other conditions warrant
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Other Regulatory Provisions

- Coordination with Office of Personnel Management
  - Proposed regulations provide for DoD to coordinate with OPM prior to promulgating certain issuances, where such actions could have impact on other Federal agencies or the civil service as a whole
  - Examples: establishing career groups and pay bands; establishing new qualifications standards; setting maximum pay rates; setting pay ranges and local market supplements
- Continuing Collaboration – process to include unions in further development of NSPS, e.g., development of implementing issuances
  - Provides opportunity for unions to review and comment on draft proposals; and discuss their views with DoD officials prior to issuance
  - Provides that union comments will become part of official record and considered prior to finalization of proposal
- Program Evaluation
  - Formal procedures required by regulations to assess and evaluate NSPS implementation
  - Provides opportunity for unions to participate in process

Who is Affected by NSPS?

- NSPS Human Resources System (Pay, performance, hiring, RIF, adverse actions, and appeals provisions)
  - Vast majority of DoD employees eligible for coverage, but provisions will initially apply only to selected General Schedule (or equivalent) employees in Spiral One organizations (includes certain demonstration project and alternative personnel system employees)
  - Certain categories excluded (e.g., intelligence personnel, Defense Labs)
  - Employees in special pay/classification systems (e.g., wage grade) will be phased in later (not sooner that eighteen months)

- NSPS Labor Relations System
  - Applies to all employees and labor organizations currently covered by Chapter 71 of title 5
  - Will be implemented across entire Department when final regulations are effective

Next Steps

- February 14 publication in Federal Register of proposed NSPS regulations for public comment (30 days)
- Statutory review & comment by employee unions (30 days); concurrent with public comment period
- Full and fair consideration of comments and recommendations
- Meet and confer period with employee unions (minimum of 30 days)
  - Discuss areas of contention; attempt to reach agreement
  - Assistance from Federal Mediation and Conciliation Service
  - Notify Congress of outcome of meet and confer
- Finalize regulations

BACKUP SLIDES

Regulatory Construction

- Provisions for classification, pay, performance management, hiring, reduction in force written in broad, enabling regulatory language
  - Establishes basic framework for HR system, allows for necessary flexibility and tailoring within DoD to meet changing needs over time
  - Detailed procedures to be promulgated in implementing issuances within DoD
- Provisions for adverse actions, appeals, and labor relations written in more detailed terms
- NSPS implementing issuances subject to “continuing collaboration” process with employee representatives (as described in proposed regulations); opportunity for union input in development of details of system

Classification

- New pay banding system simplifies job classification process and provides flexibility to assign work amidst changing mission requirements and new technologies
- Simplified structure replaces General Schedule system
- Positions grouped in broad career groups and pay schedules based on nature of work, mission, career patterns, competencies
- Pay bands replace GS grades with broad salary ranges, based on level of work (e.g., entry level, full performance level, supervisor)
- Pay bands provide more flexibility to assign employees new or different work
- Lengthy, detailed job descriptions no longer needed
- Movement through pay band based primarily on

Pay/Compensation

- The proposed pay system is intended to attract, develop, retain,and reward high-performing employees through appropriate compensation
- Regulations provide framework for DoD to move towards market sensitive pay
  - Consideration of local market conditions to set pay band rates
  - Market factors taken into account on setting pay for new hires
- Annual performance pay increases
  - Based on performance/contribution, rather than longevity
  - Larger increases to outstanding performers
  - Increases not given to unacceptable performers
- Adjustments to rate ranges determined by Secretary –increases associated with rate range adjustments not given to unacceptable

Performance Management

- The NSPS proposed performance management system is designed to foster a high-performing culture, encourage employee engagement and robust communication, and enhance the overall effectiveness of the Department
- Cornerstone of a successful performance-based pay system
- Supervisors work with employees to establish performance goals and expectations, aligned with mission-related goals
- Recognition of conduct (behavior, professional demeanor) as an element of performance
- Ongoing feedback and communication between supervisor and employees
- Intense training planned (employees, supervisors, managers, HR community)
- Ratings reflect meaningful distinctions in employee performance (no forced distribution or quotas)

Hiring/Staffing

- NSPS proposal provides flexibilities to improve hiring processes, attract high-quality applicants, and enable DoD to meet critical mission requirements, while respecting principles of merit and fitness, and preserving veterans' preference
- DoD, with OPM, may establish new hiring authorities, tailored to DoD's needs
- No change in principle of veterans' preference
- Government-wide hiring authorities and tools retained
- Direct-hire authority for severe shortage or critical needs vested in Secretary
- Opportunity to improve, streamline examining procedures to speedup the hiring process

Reduction in Force

- Proposed reduction in force (RIF) changes designed to streamline the procedures used to shape organizations
- No change in principle of veterans preference for RIF
- Simplified RIF process
  - Greater precision in defining competitive areas and retention lists (based on organization, location, line of business, or other business related factors)
  - Flexibility to minimize disruption associated with RIF
- Greater emphasis on performance (over seniority) in RIF

Adverse Actions

- Proposed changes designed to recognize need for workplace accountability, provide efficient tools for dealing with performance and conduct issues, and protect rights of employees
- Single process for taking adverse actions based on performance and/or conduct
- Streamlined 15-day notice/10-day reply period
- Ensures due process
- Allows Secretary to designate Mandatory Removal Offenses (MROs)
  - Proposed regulations provide Secretary authority to establish MROs, but do not specify offenses
  - Recognizes potential need to identify list of offenses so egregious as to warrant mandatory removal, reserving authority to mitigate penalty to Secretary only
  - Development and publication of MROs would include input from employee representatives

Appeals

- NSPS proposal provides for streamlined, efficient appeals process that provides deference to DoD's critical national security mission, while preserving employee protections and due process
- Expedited appeals process, using MSPB administrative judges (AJ), with improved procedures
  - Filing deadline for appeals reduced to 20 days
  - Summary judgment provided for when facts not in dispute
  - Initial decision must be rendered within 90 days
- Provides for DoD review of decisions
  - DoD has 30 days to review initial decision (or it becomes final)
  - DoD may remand, modify, affirm, or reverse initial decision, based on stringent criteria
  - Final DoD decisions (including AJ decisions that become final) may be appealed to full MSPB, which retains limited review authority
- Single burden of proof standard: preponderance
- Mitigation by MSPB permitted only when penalty is wholly without justification
- Judicial review retained

Labor Relations

- New proposed labor relations system designed to recognize DoD national security mission and its need to act expeditiously in executing its mission, while preserving collective bargaining rights of its employees
- Proposal expands non-negotiable management rights (to include determining numbers, types and grades of employees, methods, technology and means of performing work)
  - Prohibits bargaining over procedures in exercising core management rights, but management will consult with unions (consideration of union views & recommendations; but agreement not required)
  - DoD and Component-wide issuances (e.g., directives, policies, manuals) non-negotiable
  - Provides for bargaining over procedures in exercising other management rights (e.g., layoffs, RIF, selection or promotion procedures, disciplinary actions), but do so prospectively (post-implementation)
  - Expedited collective bargaining with impasse resolution
  - Nothing delays management's ability to act to accomplish mission
- Bargaining required over changes to conditions of employment, when change is foreseeable, substantial, and significant in impact and duration
- Regulations provide for bargaining above the level of recognition (i.e., national level bargaining), at the discretion of the Secretary (unions may request such bargaining); results are binding on subordinate units, not subject to local ratification
- Provides for bargaining with multiple bargaining units over single issue (or set of issues), where installations or organizations have multiple bargaining units (e.g., installation-wide parking policy)

Labor Relations, Continued

- **Proposed regulations establish a National Security Labor Relations Board to resolve labor disputes**
  - **Three-member board, with fixed terms, appointed by Secretary (at least one member appointed in consultation with OPM)**
  - **Members are independent, impartial, with expertise in labor relations and understanding of DoD national security mission; may only be removed for inefficiency, neglect of duty, or malfeasance**
  - **One-stop shopping for resolution of labor disputes, including unfair labor practices, scope of bargaining and duty to bargain disputes, negotiation impasses, and arbitration exceptions**
- **Proposed system retains negotiated grievance procedures with arbitration; but excludes matters relating to pay, MRO actions, and ratings of record (DoD will establish a separate administrative process for reconsideration of performance ratings, to ensure consistency in the way ratings are challenged)**
- **Proposal clarifies representation rights and duties**
  - **Preserves union right to attend "formal discussions" where the purpose is to discuss changes to personnel policies, practices, or working conditions, but does not extend to discussions over operational matters or EEO complaint proceedings unless acting as personal representative of employee**
  - **Preserves employee right to request union representation during management investigations, but does not extend to investigations conducted by Inspector General or other DoD investigatory organizations**